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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|---------------------|------------------|
| 09/846,773 | 05/01/2001 | Kazuo Matsuzaki | M1971-92 | 4627 |
| 7278 | 7590 | 12/04/2003 | EXAMINER | |
| DARBY & DARBY P.C. | | | GHYKA, ALEXANDER G | |
| P. O. BOX 5257 | | | ART UNIT | PAPER NUMBER |
| NEW YORK, NY 10150-5257 | | | 2812 | |

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/846,773

Applicant(s)

MATSUZAKI ET AL.

Examiner

Alexander G. Ghyka

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

ALEXANDER GHYKA
PRIMARY EXAMINER

Av 28 12
Alex Ghyka

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Part III DETAILED ACTION

Restriction Requirement

1. Restriction to one of the following inventions is required under 35 U.S.C. § 121:
 - I. Claims 8-11 and 15-17, drawn to a method, classified in Class 438, subclass 1+.
 - II. Claims 1-7, 12-14 and 18-31, drawn to a device, classified in Class 257, subclass 1+.
2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by using a materially different medium.
3. Because these inventions are distinct for the reasons given above and
 - a) have acquired a separate status in the art as shown by their different classifications,
 - b) have acquired a separate status in the art because of their recognized divergent subject matter, and
 - c) the searches for the individual Groups are not coextensive, restriction for examination purposes as indicated is proper.

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4. A telephone call was made to Lyman H. Smith on November 25, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Ghyka whose telephone number is (703) 305-3407. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 8:30 AM to 7:00 PM. The fax phone number for this Group is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

AGG

November 25, 2003

ALEXANDER GHYKA
PRIMARY EXAMINER

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